

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 01.09.2011

W.P.(C) No.5568/2011 and C.M.No.11374/2011

Shri Dakshesh Sharma Petitioner

Through: Ms. Meenu Mainee, Advocate.

Vs.

Vice Chancellor, Delhi University
& Anr. Respondents

Through: Mr. Mohinder J.S Rupal, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J.Oral :

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondent to grant him admission in MIB Course 2011-2013 Batch in accordance with his merit position.

2. Brief facts of the case relevant for deciding the present petition are that after having passed his 12th examination and B. Tech Course, the petitioner had appeared in CAT examination in the month of November 2010 and was declared successful by securing 95 percentile. After having qualified the said entrance examination the petitioner sought admission in MIB/MHROD in Delhi University in Department of Commerce and vide letter dated 10.3.2011, the Delhi School of Economics respondent No.2 informed the petitioner that based on his performance in the CAT test he was shortlisted to participate in a group discussion and interview for seeking admission in the said MIB Programme. After having appeared in the group discussion and the interview conducted by the respondent no. 2, the name of the petitioner was shortlisted and his rank was at serial no. 106 in the merit list of shortlisted

candidates prepared by the respondent. Based on the said merit list, the petitioner was also selected for provisional admission to the said MIB Programme for the academic session 2011-13 and this was informed to the petitioner by the respondent vide their letter dated 7.4.2011. The petitioner through the said letter was also required to furnish his original certificates for participating on the first date of counseling i.e. 17.4.2011. The petitioner could not get a seat in the first counseling and not even in the second counseling, which was held on 15.5.2011. In the second counseling the students up to serial no. 102 in the merit list could secure their seats in the said MIB Programme but still there were vacancies to be further filled by the respondent no.2, but the respondent no.2 did not announce any date or schedule for holding a third counseling. In such a scenario, the petitioner made a representation to the Vice Chancellor of University of Delhi on 24.5.2011, requesting him for filling up all the seats well before the commencement of the academic session of the said course. Getting no response from the Vice-Chancellor, the petitioner then had sought information regarding existing vacant seats

under the RTI vide his letter dated 1.6.2011 and in response to the said information, one Professor Mr. J.P. Sharma, officiating Head of the Department of Commerce informed the petitioner that 10 seats were still vacant in the MIB Programme but since the admissions have closed, no counseling will take place. After getting the said information under the RTI, the petitioner submitted yet another representation dated 30.6.2011 to the Programme Coordinator of respondent No.2, but the petitioner did not receive any response to the said representation, but then later he came to know that the respondent no. 2 had conducted an extended second counseling session when the candidates lower in rank to the petitioner in the merit list were given admission in the said course. The petitioner also came to know that even after filling up some seats in the said extended second counseling, there still remained two seats in the said MIB Course. The petitioner along with his father personally met the Programme Controller/MIB on 21.7.2011 when it was revealed to him that the extended second counseling has taken place on 19.7.2011 and since the petitioner did not attend the extended second counseling, therefore, even those students

who are lower in the merit position than the petitioner were given admission in the said course. Feeling aggrieved with the arbitrary and discriminatory acts of the respondent no.2 in not giving an opportunity to the petitioner to participate in the extended second counseling, the petitioner has preferred the present petition.

3. Arguing for the petitioner, Ms. Meenu Maini, learned counsel submits that at the time of first counseling and the second counseling, written letters were issued by the respondent no.2 but at the time of extended second counseling no such letter was sent by the respondent no.2 to the petitioner. Terming such an act of the respondent no.2 as arbitrary and discriminatory, the counsel contended that the respondent no.2 has compromised the merit by denying seat to a meritorious candidate whose rank in the merit list is higher than those candidates who were granted admission in the extended second counseling. Counsel thus urges that such an action on the part of the respondent no.2 is in violation of Article 14 and 16 of the Constitution of India. Counsel for the petitioner has also taken a strong exception to the information

given by the officiating Head of the Department of Commerce who in his reply under the RTI Act took a categorical stand that the admissions are closed and there will not be any further counseling. The contention of the counsel for the petitioner is that the petitioner was deliberately misled so that some other students could be favoured to get admission in place of the petitioner. The counsel has also taken a stand that no communication was sent by the respondent to inform the petitioner about the date of the extended second counseling although the counsel has fairly admitted that the petitioner did not check up the status about the extended second counseling on the website of the respondent. Giving an explanation for not verifying the schedule on the website of the respondent, counsel submits that the petitioner was led to believe by the said RTI reply that there will be no further counseling and also because there was no response when the petitioner made personal visits to the respondent no.2 to find out the schedule of extended second counseling.

4. Opposing the present petition, Mr. M.J.S. Rupal, learned counsel for the respondents states that the meeting of

the Advisory Committee constituted by the respondent no.2 was held on 6.7.2011, wherein the decision was taken by the said Committee to conduct an extended second counseling on 19.7.2011. Counsel further points out that all the candidates right from the first rank onwards were informed by the respondent no.2 to participate in the extended second counseling and this information was given to them through SMS as per the mobile phone numbers provided by each candidate in the application form submitted for admission and the said message was sent not only through the mobile phone but through internet as well. Counsel further submits that in addition to the said mode of communication even letters were dispatched through ordinary post to all the candidates and above all the said information of extended second counseling was also put up by the respondents on their website on 8.7.2011. Counsel also points out that on 15.7.2011, another document was uploaded on the website by the name (new_extended_second_counseling_display_counseling_list MIB-MHROD (2011-2013)) and the said document contained a list of all the general category candidates who were called to

participate in the second extended counseling in order of merit. The contention of the counsel for the respondent is that each and every candidate was fully informed about the decision of the respondent no.2 to hold extended second counseling and the exact date thereof, but yet the petitioner did not present himself to participate in the extended second counseling and for his own negligence the petitioner cannot blame the respondent no.2 or the Coordinator of the said Admission Committee.

5. Giving an explanation for the reply sent by the officiating Head of the Department of Commerce, counsel submits that the Head of the Department i.e. Professor K.V. Bhanu Murthy was on leave from 27.05.2011 to 28.06.2011 and the decision in respect of holding of the extended second counseling could be taken only on the rejoining of the said Head of the Department, and therefore the officiating Head had only given the position as it was existing then and therefore, the petitioner cannot take any undue advantage of the said information given by the officiating Head of the Department who was otherwise not competent to take

decision about the extended second counseling. Counsel also points out that it was not obligatory on the part of the respondent no.2 to have given personal communication to all the candidates including the petitioner to participate in the extended second counseling as through the information uploaded on the website of the respondent no.2, the candidates were made aware about the decision of the respondent no.2 to conduct an extended second counseling but yet an extra effort was made to send a personal communication to all the candidates through SMS and letters by ordinary mode. Counsel thus submits that the action of the respondent cannot be termed as arbitrary or discriminatory as the entire process of counseling was conducted by the respondent no.2 in a most fair and transparent manner. Counsel has also pointed out that in fact the petitioner has not approached this court with clean hands and he had deliberately suppressed the information of having received the SMS and the letter sent by the respondent no.2 by ordinary mode. Counsel also submits that the academic session for the course has already begun and if any direction

is given by this court now to fill the two unfilled seats, the same would be humanly impossible as for filling the said two seats again the respondent no.2 will have to start the process by calling the students from the first rank and then these two seats will have to be filled at the midstream session.

6. I have heard learned counsel for the parties at the considerable length and given my thoughtful consideration to the arguments advanced by them.

7. The petitioner applied to respondent no.2 for admission in MIB course after having qualified the CAT with 95% percentile marks. The petitioner was called for GD/interview and the petitioner was placed at serial no.106 of the merit list. The petitioner thereafter was called for his first counseling on 17.4.2011 where he could not secure a seat and was thus again called for the second counseling on 15.5.2011 wherein also he was not successful in securing a seat. The cause of heartburn of the petitioner herein is that he was not intimated about the extended second round of counseling that was held on 19.7.2011 and as he had no information regarding

the same, he could not appear in the extended second round and thus the students below him in the merit list were given admission whereas he has been illegally denied admission.

8. It is the case of the petitioner that when he was not able to secure a seat even after the second round of counseling, he made a representation to the Vice Chancellor of respondent no.1 on 24.5.2011 to which he did not receive any reply. The petitioner thereafter applied under the Right to Information Act on 1.6.2011 to seek information regarding the existing vacant seats and in reply to the same, Professor J.P Singh, the Officiating Head of the Department of Commerce vide reply dated 13.6.2011 stated that there are 10 vacant seats in the MIB course and as the admissions are closed, no criteria has been devised to fill the same and no next counseling is to take place. The petitioner again made a representation vide letter dated 30.6.2011 to the Coordinator Admission for conducting a third counseling for filling up the 10 vacant seats. The contention of the petitioner is that he was continuously following his case with the respondent no.2, but he was still not informed about the extended second round of

counseling and came to know that the same has already taken place on 19.7.2011 when he along with his father met the Programme Coordinator on 21.7.2011, which illegal, arbitrary and discriminatory act on the part of the respondent has victimized the petitioner. The counsel for the petitioner has also contented that the petitioner did not receive any SMS/email or any letter by post informing him about the extended second round of counseling as it is not possible that the petitioner who stood a fair chance of getting admission in the extended round of counseling and has also been requesting for the same by making various representations, would not attend the same deliberately. The counsel for the petitioner has also submitted that the students with rank as low as 175 have got admission and the petitioner with the rank of 106 has been denied admission. The counsel also argued that even at present there still exist two vacant seats in the said course, therefore, a direction can be given by this court to the respondents to give admission to the petitioner.

9. The counsel for the respondents on the other hand has submitted that after the second counseling was over,

professor K.V Bhanu Murthy , the Head of the Department of Commerce proceeded on leave from 27.5.2011 to 28.6.2011 and in the meantime while he was on leave, 10 seats were still vacant in the MIB course, which ultimately swelled to 13 seats out of the total 33 admissions which were made for the general category through the first and second counseling. The defence raised by counsel for the respondent is that the fact of the existing vacancies was reported to the Head of the Department on his rejoining and a meeting of the Admission Advisory Committee was held on 6.7.2011 wherein it was resolved to conduct the extended second round of counseling on 19.7.2011. The stand of the counsel for the respondent is that all students right from the first rank onwards were informed by SMS as per the mobile phone numbers provided by each candidate in the Application form submitted for admission including the petitioner. The counsel has also submitted that in addition to the SMS on mobile phone and through the internet, a letter was also sent by post and the information regarding the extended second round was also put on the website of the respondent no.2 on 8.7.2011 itself. Another document was

uploaded on the website on 15.7.2011 which contains the names of all the general category candidates called for the extended counseling and this demonstrates that the respondent had made all endeavour to inform all the candidates about the said extended counseling. On the contention of the counsel for the petitioner that there are still two vacant seats and the petitioner be now given admission, the counsel for the respondent submitted that the admissions stand closed now and the current session has already begun with the 1/3rd lectures being completed and hence it would not be possible to give admission to the petitioner at this stage.

10. It is not in dispute between the parties that the petitioner was present for the first and second round of counseling but could not manage to secure a seat. It cannot be denied that the petitioner vide his representation to the Vice Chancellor of respondent No.1 wanted that another round of counseling be conducted. It is also a fact that the petitioner applied under the RTI for seeking information regarding the existing vacancies to gauge his chance and on the reply received under the said application by the Officiating Head of

the Department he came to know that there were 10 vacancies, in response to which he wrote to the Coordinator Admission for conducting another counseling so that the vacant seats be filled. Admittedly, the petitioner did not get any reply to the aforesaid representations and had thus consigned to his fate and did not follow up his case any further. It has been admitted by the petitioner that he did not check the website of the respondent after he did not get any response to his representations and therefore did not come to know about the extended second round of counseling. In the peak time of admissions, the educational Institutions like the respondents are flooded with representations and requests and it is nothing but a grossly naïve presumption on the part of the petitioner that as the representations have not been replied to, there would be no chance for any other counseling to take place. It is a caveat to the students that it is their bounden duty to keep a tab on the admission processes taking place in the institutes where they are vying for admission. Time is the essence in today's arduous and cut throat competition for admission and the petitioner should have been more diligent, vigilant and on

his toes for following up the process of admissions in the respondent institute.

11. The contention of the counsel for the petitioner that the respondent no.2 vide the RTI reply had intimated that there would be no admissions taking place any further which caused prejudice and has led to the victimization of the petitioner does not cut any ice as the RTI reply was sent on 13.6.2011 and the meeting of the Admission Committee was held on 9.7.2011 wherein it was decided to hold the extended second round of counseling on 19.7.2011. The officiating Head of the Department thus made no false statement as it was true at the time it was made and the petitioner cannot treat the said statement as the last word to be cast in stone and should have been on the go for checking the admission status. The admission of the petitioner that he did not check the website when he got no reply to his representation as there was no occasion for the same and came to know that the extended second round has already taken place when he along with his father visited the Programme Coordinator shows that though the petitioner was active in following his case in the beginning

but certainly became complacent thereafter which proved fatal to him and to his career and thus he cannot now turn around and blame the respondents for his own Frankenstein.

12. This court also does not find any force in the contention of the counsel for the petitioner that the respondents did not intimate him and he received no SMS through mobile or internet or by post for conducting the extended round of counseling as there is no reason to attribute any malafide to the respondent for discriminating the petitioner vis a vis other candidates who were called for the extended counseling and attended the same. Even otherwise, the onus is on the petitioner to keep himself abreast with the developments and not for the respondents to keep track once they have timely uploaded the said information on their website which is a public portal accessible to all.

13. As far as the contention of the counsel for the petitioner that there are still 2 seats vacant in the MIB course in the respondent Institute and he can be given admission is concerned, this court is of the considered view that the same

cannot be done in the face of the fact that the course has already begun from 21.7.2011 and 1/3rd lectures have already taken place and the petitioner would not be able to make up the 3/4th attendance required for appearing in the first semester examinations as the classes are scheduled to finish by 19.11.2011. Even otherwise as per the mandate of the Supreme Court through various judicial pronouncements, midstream admission cannot be granted. Here it would be useful to refer to the judgment of the Apex Court in the case of ***State of Uttar Pradesh vs. Anupam Gupta(1993)Supp 1 SCC594*** wherein it was held as under:

"16. Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the midstream would disturb the courses and also works as handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained."

It was further reiterated by the Apex Court in the case of ***Medical Council of India vs. Madhu Singh 2002(7)SCC258*** in the following words:

"24. It is to be noted that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. In fact, as the factual positions go to show, the inevitable result is increase in the number of seats for the next session to accommodate the students who are admitted after commencement of the course for the relevant session. Though, it was pleaded by learned counsel for respondent No.1 that with the object of preventing loss of national exchequer such admissions should be permitted, we are of the view that same cannot be a ground to permit mid- stream admissions which would be against the spirit of governing statutes. His suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The students also need rest and the continuous taking of classes with the object of fulfilling requisite number of days would be harmful to be students' physical and mental capacity to study."

Hence, it is evident from the aforesaid that midstream admissions cannot be done in any case and therefore the prayer of the petitioner for admission at this stage cannot be granted.

14. Hence, in the light of the above discussion, there is no merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR, J

September 01, 2011

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